

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

RUTHIE L. WINDSOR,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:05cv1196-MEF-DRB
)	
FRANCIS J. HARVEY,)	
Secretary of the Army,)	
)	
Defendant.)	
)	

**DEFENDANT’S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

Comes now the defendant, by and through Leura G. Canary, United States Attorney for the Middle District of Alabama, and move this Court to dismiss the above-styled action pursuant to Rules 12(b)(1) and alternatively, 56(c) of the Federal Rules of Civil Procedure. The defendant asserts that each and every claim within the complaint is due to be dismissed as the plaintiff has failed to state a claim upon which relief may be granted and/or Defendant is entitled to summary judgment as matter of law. In support of this motion, Defendant relies on the following:

1. The pleadings, which are of record and, hence not submitted herewith;
2. The exhibits attached hereto which are numbered as Defendant’s Exhibits 1 through 22.
3. The memorandum brief contemporaneously filed herewith.

WHEREFORE, premises considered, the complaint is due to be and should be dismissed and/or summary judgment granted Defendant with costs of this litigation taxed to Plaintiff.

Respectfully submitted this the 24th day of October, 2006.

LEURA G. CANARY
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to Plaintiff's attorney, Henry L. Penick, Esq.

/s/R. Randolph Neeley
Assistant United States Attorney